

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

John Hawkins and HawkLaw, PA,

Plaintiffs,

vs.

The South Carolina Commission on
Lawyer Conduct and The South Carolina Office
of Disciplinary Counsel,

Defendants.

Civil Action No. 3:21-cv-01319-JMC

**DEFENDANTS’
SUR-REPLY OPPOSING PLAINTIFFS’
MOTION TO COMPEL**

Defendants The South Carolina Commission on Lawyer Conduct and The South Carolina Office of Disciplinary Counsel (collectively, “Defendants”), by and through undersigned counsel, hereby submit the following Sur-Reply to Plaintiffs’ Reply (Dkt. No. 41) in Support of Plaintiffs’ Motion to Compel (Dkt. No. 25) filed on December 10, 2021. (*See also* Dkt. No. 44).

In their Reply, Plaintiffs allege that Defendants’ Response (Dkt. No. 39) Opposing Plaintiffs’ Motion to Compel (Dkt. No. 25) is untimely and should not be considered by the Court. (Dkt. No. 41 at 1). Plaintiffs’ counsel is misstating the procedural history of this case, as discussed below.

Plaintiffs’ Motion to Compel was filed on September 28, 2021. (*See* Dkt. No. 25). As Plaintiffs’ counsel notes, Defendants’ Response was docketed as due on October 12, 2021. (Dkt. No. 41 at 1).

However, on October 11, 2021, Defendants filed their Motion to Dismiss and Motion to Hold in Abeyance Plaintiffs’ Motion to Compel. (Dkt. No. 26). More specifically, Defendants moved to dismiss Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(c) and/or 12(b)(1), and additionally moved to hold Plaintiffs’ Motion to Compel in abeyance “until [the

Court] has ruled on th[e] Motion [to Dismiss].” (Dkt. No. 26-1 at 16). Defendants’ Motion remains pending. Plaintiffs’ counsel does not reference the Motion to Hold in Abeyance in Plaintiffs’ Reply. (*See* Dkt. No. 41).

On December 9, 2021, the Court held a hearing with counsel for the parties to discuss the status of this matter as well as the appropriate schedule for this case. (*See* Dkt. No. 38). During that hearing, Defendants’ counsel specifically stated that Plaintiffs’ Motion to Compel, as well as Defendants’ Motion to Dismiss and Motion to Hold Plaintiffs’ Motion to Compel in Abeyance, remained pending. Counsel also outlined the procedural history of the case, including the dates of all relevant filings. Counsel for Defendants noted that although the Motion to Hold in Abeyance had not been decided, Defendants still were prepared to file their Response in Opposition to Plaintiffs’ Motion that day.

Despite the discussion about the filing, Plaintiffs’ counsel did not object nor suggest that Defendants Response should be considered untimely at that point or at any time during the hearing on December 9, 2021. Defendants did, in fact, file their Response after the hearing. (Dkt. No. 39). As such, Defendants believe there was a misunderstanding on the part of counsel for both parties as to the others’ understanding of Defendants’ deadline to file their Response, particularly in light of the discussion during the hearing.

This Court should reject Plaintiffs’ argument that Defendants’ Response was untimely filed. As noted, Defendants sought to hold the Motion to Compel in abeyance pending a decision on their Motion to Dismiss (Dkt. No. 26), which remained pending at the time their Response to the Motion to Compel was filed on December 9, 2021. Moreover, Plaintiffs failed to address any of the merits of the Motion, or any of the substantive arguments set forth in Defendants’ Response. Plaintiffs’ Motion to Compel should be denied.

Respectfully submitted,

/s/ Angus H. Macaulay

Susi P. McWilliams, Fed. ID No. 3351

smcwilliams@nexsenpruet.com

Angus H. Macaulay, Fed. ID No. 5248

amacaulay@nexsenpruet.com

Sara S. Svedberg, Fed. ID No. 11928

ssvedberg@nexsenpruet.com

Brittany N. Clark, Fed. ID No. 12891

bclark@nexsenpruet.com

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Drawer 2426

Columbia, SC 29202

PHONE: 803.771.8900

FACSIMILE: 803.727.1435

*Counsel for Defendants, The South Carolina
Commission on Lawyer Conduct and The South
Carolina Office of Disciplinary Counsel*

December 13, 2021
Columbia, South Carolina